

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN**

Tuesday, the 19th day of December 2023 / 28th Agrahayana, 1945
WP(C) NO. 34770 OF 2023 (U)

PETITIONERS:

1. AYSHAKUTTY M, AGED 49 YEARS,
2. SIDHIQ, AGED 55 YEARS,

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, SASTHRI BHAVAN, NEW DELHI, PIN - 110001
2. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE, SECRETARIAT, THIRUVANANTHAPURAM , PIN - 695001
3. THE DISTRICT REPRODUCTIVE & CHILD HEALTH ("RCH") OFFICER, DISTRICT MEDICAL OFFICE, ERNAKULAM, PARK AVENUE, MARINE DRIVE, ERNAKULAM, KERALA, PIN - 682011
4. SABINE HOSPITAL AND RESEARCH CENTRE PVT. LTD, REPRESENTED BY ITS MANAGING DIRECTOR, PEZHAKKAPPALLY PO, MUVATTUPUZHA , PIN - 686673

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents 1 to 3 to take immediate steps so as to require the 4th respondent to commence providing ART services to the petitioners, including permitting to extract the semen of the 2nd petitioner, at the earliest, pending disposal of the Writ Petition (Civil).

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 02.11.2023 and upon hearing the arguments of M/S.AKASH S & GIRISH KUMAR M S, Advocates for the petitioners, and of SRI.K.SUDHINKUMAR Advocate for R1, SMT.MINI GOPINATH, CENTRAL GOVERNMENT COUNSEL, SMT.RAMOLA NAYANPALLY, AMICUS CURIAE, the Court passed the following:

DEVAN RAMACHANDRAN, J.

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**W.P.(C).Nos. 34687/2023, 34770/2023,
34790/2023, 34891/2023, 36857/2023
& 39597/2023**

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Dated this the 19th day of December, 2023

ORDER

These are the cases where the wives are below 50 years or much below it, and the husbands are either 55 or 56 years.

2. These writ petitions have already been heard by this Court, along with the batch of cases, and the impact of Section 21(g) has already been noticed.

3. As per the afore provision, Assisted Reproductive Technology ('ART' for short) services can be applied to a woman below the age of 50 and to a man below the age of 55. *Prima facie*, this statute does not say that both of these conditions should apply simultaneously.

4. In the cases at hand, the women are below 50 years, therefore, fully within the ambit of the afore provision, to apply for the ART services; though their husbands may not be. But, as long as the statute does not, *prima facie*, maintain that both the man and woman should be able to apply for the services together, the women are entitled to relief.

5. Of course, the argument of Smt. Mini Gopinath - learned Central Government Counsel, is that even for a woman to be able to apply for the ART service, she should have the gamete from a man

who can apply for it only if he is below 55 years. This argument certainly may look lustrous, but if examined closely, it can mean that merely because the husband is above 55, the wife will lose her right to apply for the services, even though she is below 50 years. It will be too far-fetched to even imagine, much less suggest, that the woman must then be forced to seek the assistance of another man.

6. I am persuaded to the afore because, it is without contest that if the gamete from the husband is not viable, then even a donor is possible under the statutory scheme.

7. Therefore, as an interim measure, and in the specific circumstances of this case without making it a precedent, I allow the petitioners in these cases to apply for the ART services, however, for only one cycle.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

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